

AMENDED IN ASSEMBLY MAY 4, 2005

AMENDED IN ASSEMBLY MARCH 29, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 454

Introduced by Assembly Member Sharon Runner

February 15, 2005

An act to amend Section 25658 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 454, as amended, Sharon Runner. Alcoholic beverages: underage drinking.

Under the Alcoholic Beverage Control Act, it is a misdemeanor for any person to provide an alcoholic beverage to a person under the age of 21 years who consumes the beverage and thereby proximately causes great bodily injury or death, as specified.

This bill would also make that act a felony require that the provider of an alcoholic beverage who knew, or reasonably should have known, that the alcoholic beverage consumer was under the age of 21 years, and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, and the provider knew, or reasonably should have known of that danger. This bill would make that act punishable as either a misdemeanor or a felony. By

By changing the definition of a crime, and by increasing the penalties for an existing crime therefor, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25658 of the Business and Professions
2 Code is amended to read:

3 25658. (a) Except as otherwise provided in subdivision (c),
4 every person who sells, furnishes, gives, or causes to be sold,
5 furnished, or given away, any alcoholic beverage to any person
6 under the age of 21 years is guilty of a misdemeanor.

7 (b) Any person under the age of 21 years who purchases any
8 alcoholic beverage, or any person under the age of 21 years who
9 consumes any alcoholic beverage in any on-sale premises, is
10 guilty of a misdemeanor.

11 (c) Any person who violates subdivision (a) by purchasing any
12 alcoholic beverage for, or furnishing, giving, or giving away any
13 alcoholic beverage to, a person *who the provider knew or*
14 *reasonably should have known to be* under the age of 21 years,
15 and the person under the age of 21 years thereafter consumes the
16 alcohol and thereby proximately causes great bodily injury or
17 death to himself, herself, or any other person, *and the provider*
18 *knew or reasonably should have known of the danger*, is guilty of
19 a misdemeanor or a felony.

20 (d) Any on-sale licensee who knowingly permits a person
21 under the age of 21 years to consume any alcoholic beverage in
22 the on-sale premises, whether or not the licensee has knowledge
23 that the person is under the age of 21 years, is guilty of a
24 misdemeanor.

25 (e) (1) Except as otherwise provided in paragraph (2) or (3),
26 any person who violates this section shall be punished by a fine
27 of two hundred fifty dollars (\$250), no part of which shall be
28 suspended, or the person shall be required to perform not less
29 than 24 hours or more than 32 hours of community service
30 during hours when the person is not employed and is not
31 attending school, or a combination of fine and community

1 service as determined by the court. A second or subsequent
2 violation of subdivision (b) shall be punished by a fine of not
3 more than five hundred dollars (\$500), or the person shall be
4 required to perform not less than 36 hours or more than 48 hours
5 of community service during hours when the person is not
6 employed and is not attending school, or a combination of fine
7 and community service as determined by the court. It is the intent
8 of the Legislature that the community service requirements
9 prescribed in this section require service at an alcohol or drug
10 treatment program or facility or at a county coroner's office, if
11 available, in the area where the violation occurred or where the
12 person resides.

13 (2) Except as provided in paragraph (3), any person who
14 violates subdivision (a) by furnishing an alcoholic beverage, or
15 causing an alcoholic beverage to be furnished, to a minor shall be
16 punished by a fine of one thousand dollars (\$1,000), no part of
17 which shall be suspended, and the person shall be required to
18 perform not less than 24 hours of community service during
19 hours when the person is not employed and is not attending
20 school.

21 (3) Any person who violates subdivision (c) shall be punished
22 by imprisonment in a county jail for a minimum term of six
23 months not to exceed one year, by a fine not exceeding one
24 thousand dollars (\$1,000), or by both imprisonment and fine.

25 (f) Persons under the age of 21 years may be used by peace
26 officers in the enforcement of this section to apprehend licensees,
27 or employees or agents of licensees, who sell alcoholic beverages
28 to minors. Notwithstanding subdivision (b), any person under the
29 age of 21 years who purchases or attempts to purchase any
30 alcoholic beverage while under the direction of a peace officer is
31 immune from prosecution for that purchase or attempt to
32 purchase an alcoholic beverage. Guidelines with respect to the
33 use of persons under the age of 21 years as decoys shall be
34 adopted and published by the department in accordance with the
35 rulemaking portion of the Administrative Procedure Act (Chapter
36 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
37 Title 2 of the Government Code). Law enforcement-initiated
38 minor decoy programs in operation prior to the effective date of
39 regulatory guidelines adopted by the department shall be
40 authorized as long as the minor decoy displays to the seller of

1 alcoholic beverages the appearance of a person under the age of
2 21 years. This subdivision shall not be construed to prevent the
3 department from taking disciplinary action against a licensee
4 who sells alcoholic beverages to a minor decoy prior to the
5 department's final adoption of regulatory guidelines. After the
6 completion of every minor decoy program performed under this
7 subdivision, the law enforcement agency using the decoy shall
8 notify licensees within 72 hours of the results of the program.
9 When the use of a minor decoy results in the issuance of a
10 citation, the notification required shall be given within 72 hours
11 of the issuance of the citation. A law enforcement agency may
12 comply with this requirement by leaving a written notice at the
13 licensed premises addressed to the licensee, or by mailing a
14 notice addressed to the licensee.

15 (g) The penalties imposed by this section do not preclude
16 prosecution under any other provision of law, including, but not
17 limited to, Section 272 of the Penal Code.

18 SEC. 2. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the
23 penalty for a crime or infraction, within the meaning of Section
24 17556 of the Government Code, or changes the definition of a
25 crime within the meaning of Section 6 of Article XIII B of the
26 California Constitution.